

Amendment to CUTTING TEMPLATE FOR CUTTING MEAT PIECES  
Zachary A. Lundin, inventor  
Serial No. 10/613,134  
Filed July 3, 2003  
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REMARKS/ARGUMENTS

Claims 1-5 and 11 remain in this application.

Claim 1 has been amended.

Claims 6-10 have been withdrawn from consideration.

Claim 12 has been added.

The disclosure was objected to because of the use of the term lineal on page 7, line 24. It is believed that the Examiner meant line 26, and lineal in this location has been changed to linear. Also, on page 11, line 4, the term lineal has been changed to linear.

Claim 1 has been objected to on the base of the term lineal in lines 11 and 10. These have now been changed to linear.

Claims 1-3 have been rejected under 35 U.S.C. §102(b) as being anticipated by the reference to Dailey. This rejection is respectfully traversed.

As understood under any rejection under 102(b) requires an anticipation by that reference of all claimed subject matter. The structure of Dailey is directed to a meat holding device which is intended to be used when carving of meat for serving. The structure of Dailey is not a cutting template for use of cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight. The structure of Dailey is

only for the purpose of holding a large chunk of meat to facilitate carving from the chunk of meat.

The basic structure defined within independent Claim 1 is different from the structure of Dailey. The Examiner has stated that a recitation of the intended use of the subject invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The intended use of applicant's invention of a cutting template comprises a structural difference that is different from the reference of Dailey, and it is believed that the basic context of applicant's claims patentably distinguish from Dailey. The Examiner also stated if the prior art structure is capable of performing the intended use then it meets the claim. The prior art structure of Dailey is not capable of being used as a cutting template for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight. Therefore, it is believed that Dailey does not meet the structure defined in independent Claim 1.

Further, the Examiner has stated that the guide plate (16/17) of Dailey is integrally attached to the thumb rest section at an elongated linear bend. What the Examiner calls a thumb rest section constitutes a top surface of a handle and that handle is

pivotally connected by a pivot pin 21 to the guide plate 16/17. There is no integral connection and therefore the structure that is defined within independent Claim 1 is not anticipated by Dailey.

Also, applicant has defined that the guide plate is elongated and extends transversely from the thumb rest section. In Dailey, what the Examiner is calling the guide plate actually extends longitudinally from the thumb rest section. Additionally, applicant has defined a guide bar attached to the guide plate directly adjacent the linear bend. What the Examiner is calling the guide bar constitutes a sharpened pin that is designed to impale the meat that is being held in Dailey. These pins are not attached to the guide plate directly adjacent the linear bend which the Examiner is referring to as pivot pin 21 in Dailey. These pins are spaced from the pivot pin 21.

Additionally, applicant has defined the guide bar as resting on an upper surface of the meat section. In Dailey, what the Examiner is calling the equivalent of applicant's guide bar constitutes a pin that impales meat and does not rest on an upper surface of a meat section. Additionally, applicant has defined that an operator is then to move a separate cutting instrument around an exterior edge of the guide bar to cause severing of a meat piece. There is no moving of any cutting instrument in

conjunction with any of the impaling pins of Dailey to constitute separating of a meat piece.

In Claim 2, which is dependent from Claim 1, applicant has defined that there is included a means for fixing a position of the guide bar which is to be fixed in position on the meat section prior to severing of the meat piece. The Examiner has stated that the sharp pointed tip of the pin of Dailey constitutes this means. Applicant's means fixes the guide bar which is mounted on the exterior surface of the meat. The sharp pointed tip of Dailey penetrates within the interior of the meat. The problem of applicant of having to fix the position of the guide bar relative to the meat is not encountered by Dailey and Dailey only uses the pins to impale the meat to hold the meat in a desired position.

Claim 3, which is dependent from Claim 2, has further defined that the structure that fixes the position of the guide bar comprises a structure that impales the meat. It is agreed that the reference of Dailey broadly teaches the concept of a device which constitutes a pin which has a sharpened point that impales meat and therefor this teaching could be imparted to Claim 3. However, since Claim 3 depends from Claim 2 and Claim 2 depends from Claim 1, it is believed that Claim 3 will be allowed upon the allowance of Claims 1 and 2 relative to the reference to

Dailey.

The Examiner has rejected Claims 1-4 under 35 U.S.C. §102(b) as being anticipated by the reference to Stokes. The Examiner has stated that regarding Claim 1 Stokes discloses a cutting template that is capable of being used for cutting a plurality of meat pieces. Stokes discloses an eel knife and this eel knife is to be used to skin an eel. The structure of Stokes is not a cutting template. There is nowhere any teaching within Stokes of using the eel knife to cut meat pieces from a meat section all of which are precisely similar in size and weight. Additionally, the reference to Stokes shows the equivalent of applicant's guide plate as comprising a bowed structure. Applicant, within independent Claim 1, has defined the guide plate as being flat. Additionally, the Examiner has stated that the guide bar 10 of Stokes is attached to the guide plate directly adjacent the linear bend. This is not true since the guide bar of Stokes constitutes the knife blade and it is spaced from the equivalent linear bend. Additionally, the Examiner has stated that the guide plate of Stokes is to be placed against the edge of a meat section with the guide bar of Stokes resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of the guide bar to cause severing of a meat piece. There is no teaching within

Stokes of using the knife in conjunction with a separate cutting instrument that is to be moved around an exterior edge of the knife blade of Stokes to cause severing of a meat piece. The severing is to be performed by the knife blade of Stokes, not a separate cutting instrument.

Regarding dependent Claim 2, the Examiner has stated that Stokes discloses a means for fixing a position of the guide bar which is connected to the guide bar to cause the guide bar to be fixed in position on the meat section prior to severing of the meat piece. The notches 32 in Stokes do not fix the eel knife of Stokes to the meat. This fixing is achieved by the teeth 34. Fixing of the eel knife to the flesh of the eel has nothing to do with severing of a piece of meat from the eel as it is only to be used to secure a firm grip on the meat in order to skin the eel. Applicant in Claim 2 has defined that the fixing in position on the meat section is prior to severing of the meat piece. There is no severing in Stokes by utilizing of the means for fixing the position of the first guide bar of Stokes.

Claims 3 and 4 are believed to be allowable for the same reason as previously discussed in relation to Claim 3 in relative to the reference of Daily.

Claims 1-3 have also been rejected under 35 U.S.C. §102(b) as being anticipated by the reference of Mikulas. This

rejection is respectfully traversed.

The Examiner has stated that regarding independent Claim 1, Mikulas discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight. The structure of Mikulas constitutes a device for opening nuts. It has nothing to do with a cutting template, nor does it have to do with cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight. Claim 1 also defines that the guide bar is attached to the guide plate directly adjacent the linear bend. The Examiner has said that this teaching is taught by Mikulas when in fact the part that the Examiner is calling the guide bar is attached to what the Examiner is calling the guide plate some distance from the elongated linear bend, and actually attached to the guide plate on the side opposite the position of the elongated linear bend. The Examiner is also saying that the guide plate of Mikulas is to be placed against an edge of a meat section with the first guide bar resting on an upper surface of the meat section with the opposite end to then move a cutting instrument around an exterior edge of the guide bar to cause severing of a first meat piece with the procedure to be repeated to obtain meat pieces. This is definitely not true within Mikulas because Mikulas is a device for opening nuts and has nothing to do

with meat. The Examiner has stated that if the prior art structure is capable of performing the intended use then it meets the claim. A device for opening nuts is not capable of performing the intended use of a cutting template. There is a specific structural recitation which is not shown or taught by Mikulas and that is that the first guide bar is attached to the guide plate directly adjacent the linear bend and extends outwardly from the guide plate. This structure is not shown or taught by Mikulas. Other structures that are not shown or taught by Mikulas is the fact that it is a cutting template for using of cutting a plurality of meat pieces and the discussion within Claim 1 of how the cutting template is to be used is not even remotely suggested by Mikulas.

Claim 2 specifically defines a means for fixing in position of the guide bar and the Examiner is saying that that means in Mikulas comprises an edge of 18'. This is not understood by applicant. How can an edge of an item constitute a means for fixing a position of a structure?

Regarding Claim 3, the means is defined as comprising a structure that impales a meat section. Again, the Examiner has said that the edge 18' comprises this structure. How can that be said because there is no discussion or even mention in Mikulas of any association with the Mikulas device in conjunction with meat.



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Claims 1-3 have further been rejected under 35 U.S.C. §102(b) as being anticipated by an alternative interpretation of Mikulas. The Examiner is again saying that Mikulas discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight. This is not true. The Examiner is now turning it around and saying that the graspable handle of Mikulas instead of being parts 20 and 22 now comprises part 18' and the planar thumb rest section is now part 18. The guide plate is now part 20 of Mikulas and the guide bar is now 22. Again, the structure defined within Claim 1 of a guide plate integrally attached to the thumb rest section at an elongated linear bend and having a guide bar attached to the guide plate directly adjacent this linear bend is not shown or taught by Mikulas. Also regarding Claims 2 and 3, the stating that the edge of 22 constitutes a means for fixing of the guide bar and also that this edge comprises structure that impales a section is not the structure that is defined by applicant within Claims 2 and 3.

Claims 1-3 have further been rejected under 35 U.S.C. §102(b) as being anticipated by the reference of Dustrude. This rejection is respectfully traversed.

The Examiner has stated that Dustrude discloses a cutting template capable of cutting a plurality of meat pieces

from a meat section all of which are precisely similar in size and weight. The structure of Dustrude relates to a folding frame handsaw. The structure of Dustrude has nothing to do with meat. It has nothing to do with being a cutting template. The folding frame handsaw of Dustrude has a pair of frame members 12 and 14 which are to be lockingly interconnected by a latch 16. The Examiner is stating that the latch 16 constitutes a graspable handle as defined by applicant and it has a forefinger abutting section 30 and a planar thumb rest section 28 which are separated by a crease. The guide plate is defined as being member 22 of Dustrude. The Examiner has stated that the guide bar constitutes member 28 which is also a planar thumb rest section. The second member 28 is not attached directly adjacent the linear bend. Therefore, there is structure defined within Claim 1 that is not shown or taught by the handsaw of Dustrude. Additionally, the Examiner has stated that the structure of Dustrude is designed to be placed against a meat section with the operator to then move a cutting instrument around the exterior edge of the guide bar to cause severing of a meat piece. The structure of Dustrude is directed to a cutting device and has nothing to do with meat.

The Examiner has stated that regarding Claims 2 and 3 that Dustrude discloses a means 30 for fixing the position of the guide bar 28. This structure 30 constitutes a flange that extends

from member 28. The member 30 is not designed to be connected to any kind of a meat piece. Regarding Claim 3, Dustrude defines the means as comprising a structure that impales a meat section. There is no teaching of the flange 30 impaling anything, let alone meat.

Claims 1-5 have further been rejected under 35 U.S.C. §102(b) as being anticipated in an alternate interpretation of Mikulas. This rejection is respectfully traversed.

The Examiner is referring, in this rejection, to a graspable handle having a planar forefinger abutting section (top of 68) and a planar thumb rest section (side of 68) and a guide plate (50) and a first guide bar(48) within Mikulas. There are no such numbers in Mikulas. The applicant is not able to find any such numbers in any of the applied references of record. Therefore, the applying of this rejection is not understood by applicant.

Claims 1-3 are further rejected under 35 U.S.C. §102(b) as being anticipated by an alternate interpretation of Hall. This alternate interpretation is not understood since this appears to be the first application of the reference of Hall. This rejection is traversed.

The structure of Hall is directed to a sandwich holder, not a cutting template capable of cutting a plurality of meat

pieces. In Hall, the Examiner is stating that the guide bar is member 15 which is attached to the guide plate which the Examiner is saying is member 14 directly adjacent a linear bend and extending outwardly from the guide plate. Element 15 of Hall is not even attached to the same member 14 that the Examiner is referring to. There are two members 14 in Hall which constitute a top of a triangularly shaped enclosure. Element 15 constitutes a side member of each of these triangularly shaped enclosures. Each of the enclosures 10 are spaced from each other by a slotted opening 19. The structure as defined in independent Claim 1 does not read on Hall since again applicant has defined that there is a guide bar attached to the guide plate directly adjacent the linear bend and this is not shown or taught in Hall. Additionally, the Examiner is stating that the guide plate of Hall, which comprises top 14 of one of the enclosures, is to be placed against an edge of a meat section with the guide bar comprising a side 15 of one of the enclosures to be resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of the guide bar to cause severing of a meat piece. There certainly is no discussion of placing any of these elements in conjunction with a meat piece, and there certainly is no teaching of using any kind of a cutting instrument to sever a meat piece. The one advantage of Hall is

that there is actually shown a separate cutting instrument, that being a knife which fits within the opening 19, to cut a sandwich. However, the structure as shown in Hall is different from what is structurally defined within independent Claim 1.

Regarding Claims 2 and 3, the Examiner has stated that the edge 15, which constitutes a sidewall, is to be used to fix in position the guide bar which is the top 14 of one of the triangular shaped enclosures. Applicant is not able to perceive how an edge 15 is capable of fixing the top 14 to anything since normally the edge 15 might just rest on a supporting surface or may be even spaced from a supporting surface in usage of the device of Hall. There is no requirement within Hall that the edge of sidewall 15 come into contact with anything. Additionally, Claim 3 specifically defines an impaling means that impales a meat section, and again the Examiner is stating that the edge of sidewall 15 is capable of being that structure. There is no teaching within Hall of having edge 15 come into contact with anything let alone impale any kind of meat.

It is readily apparent to applicant that the Examiner is making rejections under 102(b) so as to avoid any discussion regarding non-analogous art. This applicant's opinion is that these rejections are strictly a fabrication and structural limitations defined within independent Claim 1 are present that

are being totally ignored so as to state that these rejections are under 102(b) and not under 103 thereby avoiding any issue of non-analogous art.

Claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Mikulas. This rejection is respectfully traversed.

Claim 11, which is dependent from Claim 1, further defines that the angle of deflection between the thumb rest section and the forefinger abutting section is within ten to fifteen degrees. The Examiner acknowledges the fact that the two outer ends of one of the arms of Mikulas are connected together at about twenty degrees which the Examiner is calling the forefinger abutting section and the planar thumb rest section. To vary the angle by five degrees, the Examiner is saying, is within the design of the invention and the difference would not deviate from the scope of the invention. It is applicant's contention that this particular angular relationship has been claimed because it is the most desirable and within ten to fifteen degrees the usage of the cutting template is far more comfortable than if it was twenty degrees. It is respectfully requested that the Examiner find a similar angular teaching in conjunction with a product that is designed to cut meat pieces rather than a device for opening nuts.

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It is to be noted that the structure of Mikulas is classified in Class 146, which is believed to be generically defined as within the field of tools. Applicant's structure is defined within Class 83 having to do with cutting. Applicant's structure only function is a guide for a knife where the device of Mikulas does not function in this manner. The classification between Mikulas and the present invention are nowhere near similar.

As was stated in *In re Shapleigh*, 115 USPQ 129, "The test as to whether two references are from non-analogous arts is whether one seeking to solve a problem with respect to the embodiment of a reference in one art would be apt to seek the solution to said problem in the other art". Applicant's structure has to do with a cutting template which is to function as a guide for a knife. Applicant would not be inclined to solve a problem in conjunction with a cutting template to search the art of nut openers.

As was stated within *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ 2d(BNA) 1443, 1445, "In order for a reference to be a basis for rejection of an Appellant's invention, the reference must either be in the field of Appellant's endeavor, or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." Applicant's problem has to do with

a cutting template to be used with a knife for cutting meat. Mikulas relates to a device for opening nuts. It is not known how one could say that a nut opener could be deemed to be reasonably pertinent to a cutting template. These structures are nowhere near similar.

The test for analogous art has been said to be similarity of elements, problems and purposes. (Universal Elec. Co. vs. A.O. Smith Corp., 209 U.S.P.Q. (BNA) 1077, 1081); Skega Aktiebolag vs. B.F. Goodrich Company, 164 U.S.P.Q. (BNA) 333, 334). The elements of applicant's cutting template are not even similar to the elements of a nut opener. The problem encountered for a nut opener is certainly far afield from a problem having to do with a cutting template. The purpose to construct a nut opener versus a cutting template are exceedingly far afield.

The Examiner has taken the reference of Mikulas and somehow has imagined it to be utilized as a cutting template. A basic mandate inherent in 35 U.S.C. §103 is that piecemeal reconstruction of prior art patents in light of an applicant's disclosure should not be the basis of a conclusion of obviousness (In re Kamm, 172 USPQ 298). The Examiner is taking the nut opener of Mikulas and is imagining reconstructing of it to somehow use the device as a cutting template. One of the unobvious aspects of the present invention resides in the recognition of the



constructing of a cutting template to produce identically sized and weighted pieces of meat. This is important so that when a restaurateur buys the meat and sells the meat in the form of a cooked item to consumers that each dish of the cooked item to each different consumer is essentially identical in weight. If the dishes are heavier than what has been programmed, then the restaurateur makes less money. This problem has not even been entertained by Mikulas. In essence, the Examiner is reconstructing the structure of Mikulas to be usable as a cutting template. This reconstruction is by using of applicant's own disclosure. In the past, this has not been permitted under the Patent Law (In re Roberts, 176 USPQ 313).

The Examiner has indicated that the disclosed invention is patentable. Claim 1 has now been amended to more specifically describe the relationship between the thumb rest section relative to the crease and the fact that the elongated linear bend extends in the same general direction as the crease. The crease has now been defined as being angularly disposed from parallel relative to the elongated linear end approximately fifteen degrees. Claim 1 has been amended to correct the usage of the word lineal by making it linear. Also, Claim 1 specifically refers now to a separate cutting instrument.

Claim 2, which depends from Claim 1, defines that there

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is a means for fixing the guide bar onto the meat section and Claim 3 defines that this means comprises an impaling means. Claim 4 defines that the impaling means comprises a row of sharp pointed sawteeth mounted on the guide bar. It is believed that no such structure is shown or suggested by the applied references of record. Additionally, Claim 5 has defined that the guide bar encloses an open space and such enclosing of an open space by a guide bar is not shown or suggested by the references of record. It is therefor believed that Claim 5 defines patentable subject matter.

Claim 11, which depends from Claim 1, is specifically referred to the angle between the forefinger abutting section and the thumb rest section to be ten to fifteen degrees and such a specific angular relationship is not shown or taught by the applied references of record. It is therefore believed that the originally submitted Claims 1-5 and 11 now patentably define over the references of record.

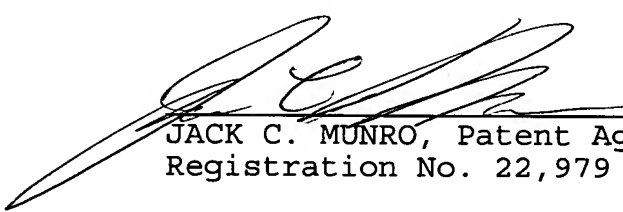
An earnest attempt has been made to further add a claim that defines more specifically the structure of the present invention. This claim is now being submitted as Claim 12 and it is believed that Claim 12 also clearly defines patentable subject matter.

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In view of the foregoing amendments to the claims and arguments presented herein, it is believed that the claims as now submitted clearly patentably define allowable subject matter over the references of record. It is courteously requested that this application be reconsidered, such reconsideration being favorable resulting in passing of this application to issue.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to account No. 13-4899.

Respectfully submitted,



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